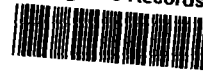


STATE OF ILLINOIS       )  
                              )  
COUNTY OF COOK         )

EPA Region 5 Records Ctr.



303231

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION

PEOPLE OF THE STATE OF ILLINOIS,       )  
ex rel. JAMES E. RYAN, Attorney        )  
General of the State of Illinois        )

Plaintiff,                                )

v.    )

UNITED AIR CLEANER COMPANY, INC.,        )  
a Delaware corporation, YASAR            )  
SAMARAH, individually and as            )  
President of UNITED AIR CLEANER         )  
COMPANY, INC. and TDC/UAC, INC.,        )

Defendants.                                 )

97011712

COMPLAINT FOR INJUNCTION AND CIVIL PENALTIES

Plaintiff, People of the State of Illinois, ex rel. JAMES E. RYAN, Attorney General of the State of Illinois, complains of the Defendants, UNITED AIR CLEANER COMPANY, INC. and YASAR SAMARAH, individually and as President of UNITED AIR CLEANER COMPANY, INC. and TDC/UAC, INC., as follows:

COUNT I

Conducting a Hazardous Waste Storage  
Operation Without a RCRA Permit

1. This Complaint is brought on behalf of the People of the State of Illinois by the Attorney General, on his own motion and, as to UNITED AIR CLEANER COMPANY, INC. and YASAR SAMARAH, upon the request of the Illinois Environmental Protection Agency ("Illinois EPA"), pursuant to Sections 42(d) and (e) of the Illinois

Environmental Protection Act ("Act"), 415 ILCS 5/42(d) and (e) (1996).

2. The Illinois EPA is an administrative agency of the State of Illinois, created pursuant to Section 4 of the Act, 415 ILCS 5/4 (1996), and charged, *inter alia*, with the duty of enforcing the Act.

3. Defendant, UNITED AIR CLEANER COMPANY, INC. ("UACC"), at all times herein mentioned, was a corporation duly organized and existing under the laws of the State of Delaware and qualified to do business in Illinois. UACC's status had been revoked as of March 1, 1996.

4. UACC owned and operated a manufacturing facility located at 9705 S. Cottage Grove Avenue, Chicago, Cook County, Illinois 60628 ("facility").

5. UACC had manufactured air filters for military tanks and for commercial vehicles, such as tractors and trucks. UACC primarily performed metal stamping, filter assembly and painting.

6. From May of 1993 to May 6, 1995, Defendant, YASAR SAMARAH ("SAMARAH") was the President of UACC, and had overseen and was responsible for the day to day operation of the facility. From May of 1993 to May 6, 1995 all activities of UACC were conducted at the direction and control of SAMARAH.

7. Defendant, TDC/UAC, Inc., is a corporation duly organized and existing under the laws of the State of Delaware and qualified to do business in Illinois beginning on December 13, 1995.

8. On May 6, 1995, SAMARAH sold the stock of UACC to William S. Janney ("Janney"). On information and belief, SAMARAH received no monies from Janney from this transaction. On August 10, 1995, a

federal equity receiver was appointed by way of Order in Meeks, et al. v. United Air Cleaner Company, et al., 95 C 2563, U.S. District Court, Northern District, Eastern Division. On November 6, 1995 the receiver removed Janney, who is now deceased, from his position as President of UACC. On December 15, 1995, TDC/UAC, Inc. purchased the assets of UACC. Since December 15, 1995 TDC/UAC, Inc. has operated and has had control of the facility.

9. Through its manufacturing process UACC generated the following: Paint Wastes from painting filters in paint booths, and from paint gun cleaning; Metal Washer Sludge from washing metal filter parts prior to assembly; Waste Plastisols as an off-specification product; Waste Oil and Oil-Dri as a waste lubricant and from spills.

10. On February 7, 1991, the Illinois EPA inspected the facility and observed that UACC generated paint waste but had not made a Hazardous Waste Determination, had delivered Special Waste to a non-permitted hauler and without completing a Special Waste Manifest, and had no record of waste shipments. After notification from the Illinois EPA, and submittals from UACC, these apparent violations observed on February 7, 1991 were resolved by May 15, 1991. At this time no storage of waste was noted by the Illinois EPA.

11. On February 16, 1994, a representative of the Illinois EPA inspected the facility and observed approximately 60 drums of Paint Waste, approximately 20 drums of Waste Plastisols, an undetermined amount of Metal Washer Sludge, and an undetermined amount of Waste Oil and Oil-Dri. There were many unlabelled drums

on-site, and drums of waste were being stored inside the buildings and outside on a ledge near a loading dock.

12. On June 27, 1994, representatives of the Illinois EPA again inspected the facility and sampled Paint Waste and Waste Plastisols. At this time, drums of waste were stored inside the buildings and were stacked outside the building on ledges on the east and south sides of the building. Also, some drums had fallen off the loading dock outside and onto the ground.

13. On September 23, 1994, the Illinois EPA again inspected the facility and observed approximately 150 drums of Paint Waste, approximately 50 drums of Waste Plastisols, an unknown amount of Metal Washer Sludge and an unknown amount of Waste Oil and Oil-Dri. The Illinois EPA observed that many drums were not properly labelled, at least one drum was open, and drums remained stacked on ledges south of the building outside, on the shipping dock and on the ground.

14. On September 28, 1994, the Illinois EPA performed a Record Review of sample results from the June 27, 1994 sampling event. The Paint Waste showed a TCLP chromium level of 61.2 mg/l and the Waste Plastisols showed a TCLP lead level of 81.9 mg/l.

15. On June 9, 1995, a representative from the Illinois EPA again inspected the facility, and none of the drums had been shipped off site, drums remained open and unlabelled and stacked outside the building and on the ground.

16. On June 10, 1996 representatives of the Illinois EPA inspected the facility and again collected samples of some drums. A record review was performed and one sample showed a TCLP chromium

level of 80.2 mg/l and another sample showed a TCLP chromium level of 33.1 mg/l.

17. On March 25, 1997, the Illinois EPA again inspected the facility and observed that the approximately 200 drums of waste remain on site from UACC's and Samarah's operation. TDC/UAC, Inc. had moved the drums of waste from outside into the building.

18. Section 702.110 of the Pollution Control Board ("Board") Waste Disposal Regulations, 35 Ill. Adm. Code 702.110, provides, in part, the following definitions:

"Disposal" (RCRA) means the discharge, deposit, injection, dumping, spilling, leaking or placing of any "hazardous waste" into or on any land or water so that such hazardous waste or any constituent of the waste may enter the environment or be emitted into the air or discharged into any waters, including groundwater.

"Hazardous Waste" means a hazardous waste as defined in 35 Ill. Adm. Code 721.103.

"Hazardous waste management" facility, ("HWM Facility") means all contiguous land, and structures, other appurtenances and improvements on the land, used for treating, storing or disposing of "hazardous waste". A facility may consist of several "treatments", "storage" or "disposal" operational units (for example, one or more landfills, surface impoundments or combinations of them.)

"Storage" (RCRA) means the holding of hazardous waste for a temporary period, at the end of which the hazardous waste is treated, disposed or stored elsewhere.

"Treatment" (RCRA) means any method, technique, process, including neutralization, designed to change the physical, chemical, or biological character or composition of any "hazardous waste" so as to neutralize such wastes, or so as to recover energy or material resources from the waste, or so as to render such wastes non-hazardous, or less hazardous; safer to transport, store, or dispose of; or amenable for recovery, amenable for storage, or reduced in volume.

19. Section 721.102 of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 721.102, provides, in pertinent part, as follows:

#### Definition of Solid Waste

- a) 1) A solid waste is any discarded material that is not excluded by Section 721.104(a) or that is not excluded pursuant to 35 Ill. Adm. Code 720.130 and 720.131.
- 2) A discarded material is any material which is:
  - A) Abandoned as explained in subsection (b); or
  - B) Recycled, as explained in subsection (c); or
  - C) Considered inherently wastelike, as explained in subsection (d), below.
- b) Materials are solid waste if they are abandoned by being:
  - 1) Disposed of; or
  - 2) Burned or incinerated; or
  - 3) Accumulated, stored or treated (but not recycled) before or in lieu of being abandoned by being disposed of, burned or incinerated.
- c) Materials are solid waste if they are recycled--or accumulated, stored or treated before recycling--as specified in subsection (c)(1) through (4) if they are:

\* \* \*

- 3) Reclaimed

20. The drums of material at the facility are materials discarded from Defendants' operation. Therefore, the drums of material at the site are solid waste.

21. Section 721.103 of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 721.103, provides, in pertinent part, as follows:

#### Definitions of Hazardous Waste

- a) A solid waste, as defined in Section 721.102, is hazardous if:

- 1) It is not excluded from regulation as a hazardous waste under Section 721.104(b); and
- 2) It meets any of the following criteria:
  - A) It exhibits any of the characteristics of hazardous waste identified in Subpart C of this Part.

22. Section 721.124 of Subpart C of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 721.124, provides, in pertinent part, as follows:

- a) A solid waste exhibits the characteristic of toxicity if, using the Toxicity Characteristic Leaching Procedure (TCLP), test Method 1311 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," U.S. EPA Publication SW-846, as incorporated by reference in 35 Ill. Adm. Code 720.111, the extract from a representative sample of the waste contains any of the contaminants listed in the table in subsection (b) below at a concentration equal to or greater than the respective value given in that table. Where the waste contains less than 0.5 percent filterable solids, the waste itself, after filtering using the methodology outlined in Method 1311, is considered to be the extract for the purpose of this Section.

BOARD NOTE: The reference to the "EP toxicity test" in 35 Ill. Adm. Code 808.410(b)(4) is to be understood as referencing the test required by this Section.

- b) A solid waste that exhibits the characteristic of toxicity has the U.S. EPA Hazardous Waste Number specified in the following table that corresponds to the toxic contaminant causing it to be hazardous.

MAXIMUM CONCENTRATION OF CONTAMINANTS  
FOR THE TOXICITY CHARACTERISTIC

U.S. EPA Hazardous Waste <u>Number</u>	<u>Contaminant</u>	<u>CAS No.</u>	Regulatory Level <u>Note (mg/L)</u>
	*	*	*
D007	Chromium	7440-47-3	5.0
	*	*	*
D008	Lead	7439-92-1	5.0

23. As alleged in paragraphs 14 and 16 of this Count, the drums of waste, having a concentration of chromium greater than 5.0 mg or having a concentration of lead greater than 5.0 mg/l exhibit the characteristic of toxicity causing them to be hazardous waste, pursuant to 35 Ill. Adm. Code 721.124.

24. Section 3.26 of the Act, 415 ILCS 5/3.26 (1996), provides the following definition:

"PERSON" is any individual, partnership, co-partnership, firm, company, limited liability company, corporation, association, joint stock company, trust estate, political subdivision, state agency or any other legal entity, or their legal representative or assigns.

25. UACC is a corporation and is therefore a person as that term is defined in the Act. SAMARAH is an individual and is therefore a person as that term is defined in the Act. TDC/UAC, Inc. is a corporation and is therefore a person as that term is defined in the Act.

26. Section 21(f) of the Act, 415 ILCS 5/21(f) (1996), provides, in pertinent part, as follows:



No person shall:

- f. Conduct any hazardous waste-storage, hazardous waste-treatment or hazardous waste-disposal operation:
  - 1. Without a RCRA permit for the site issued by the Illinois EPA under subsection (d) of the Section 39 of this Act, or in violation of any condition imposed by such permit, including periodic reports and full access to adequate records and the inspection of facilities, as may be necessary to assure compliance with this Act and under regulations and standards adopted thereunder;
  - 2. In violation of any regulations or standards adopted by the Board under this Act; . . . .

27. Section 703.121(a) of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 703.121(a), provides as follows:

RCRA Permits

- (a) No person shall conduct any hazardous waste storage, hazardous waste treatment or hazardous waste disposal operation:
  - 1) Without a RCRA permit for the HWM (hazardous waste management) facility; or
  - 2) In violation of any condition imposed by a RCRA permit;

28. Section 722.134 of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 722.134, provides, in pertinent part, as follows: ". . . a generator. . . may accumulate hazardous waste on-site for 90 days or less without a permit."

29. Defendants, UACC and Samarah, have stored hazardous waste at the facility since at least February 16, 1994. Because the drums of hazardous waste remain on site from the time when UACC and Samarah generated the waste and even though assets, stock and control had been transferred, Defendants,

UACC and Samarah, continue to store hazardous waste at the facility through the filing of this Complaint.

30. The Defendants, UACC and Samarah, have stored hazardous waste on site for more than 90 days, and are, therefore, required to obtain a RCRA permit prior to conducting a hazardous waste-storage operation at the facility.

31. TDC/UAC, Inc. has had possession and control of the facility since December 15, 1995, and has continued to store hazardous waste on site, that was generated by UACC and Samarah, through the filing of this Complaint.

32. The Defendant, TDC/UAC, Inc. has stored hazardous waste on site for more than 90 days, and is, therefore, required to obtain a RCRA permit prior to conducting a hazardous waste-storage operation at the facility.

33. Defendants, UACC, Samarah, and TDC/UAC, Inc., have not had a RCRA permit issued by the Illinois EPA to conduct a hazardous waste storage, hazardous waste treatment or hazardous waste disposal operation.

34. From at least February 16, 1994 and continuing through the filing of this Complaint, as a result of the containment of hazardous waste at the facility on a temporary basis, Defendants, UACC and Samarah have conducted a hazardous waste storage operation at the facility.

35. From December 15, 1995 and continuing through the filing of this Complaint, as a result of the containment of hazardous waste at the facility on a temporary basis,

Defendant, TDC/UAC, Inc., has conducted a hazardous waste storage operation at the facility.

36. From at least February 16, 1994 and continuing through the filing of this Complaint, the site has been used to store hazardous waste and is therefore a HWM facility.

37. From at least February 16, 1994 and continuing through the filing of this Complaint, Defendants, UACC and Samarah, have not had a RCRA permit to operate a HWM facility or to conduct a hazardous waste storage operation, and have conducted a hazardous waste-storage operation at the facility, and a hazardous waste management facility without a RCRA permit issued by the Illinois EPA, in violation of Section 21(f)(1)(1996) of the Act, 415 ILCS 5/21(f)(1)(1996), and Section 703.121(a) of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 703.121(a).

38. From December 15, 1995 and continuing through the filing of this Complaint, Defendant, TDC/UAC, Inc., has not had a RCRA permit to operate a HWM facility or to conduct a hazardous waste storage operation, and has conducted a HWM facility and hazardous waste storage operation at the facility, without a RCRA permit issued by the Illinois EPA, in violation of Section 21(f)(1)(1996) of the Act, 415 ILCS 5/21(f)(1)(1996), and Section 703.121(a) of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 703.121(a).

39. Plaintiff has no adequate remedy at law as money damages will not cure the environmental harm alleged herein. Furthermore, Plaintiff will suffer irreparable injury through

harm to the environment and its citizens until such time as this court grants equitable relief in the form of preliminary and, after a trial, permanent injunction.

WHEREFORE, the PEOPLE OF THE STATE OF ILLINOIS respectfully request that the Court grant a preliminary injunction and after a trial, a permanent injunction in favor of Plaintiff and against Defendants on Count I:

1. Finding that the Defendants have violated Section 21(f)(1) of the Act and 35 Ill. Adm. Code 703.121(a);
2. Enjoining Defendants from further violations of Section 21(f)(1) of the Act and 35 Ill. Adm. Code 703.121(a);
3. Ordering Defendants to remove all waste to a licensed treatment, storage and disposal facility, conduct a remedial investigation to identify all existing contaminated areas at the facility, remediate all contaminated areas at the facility, and complete closure and post closure care;
4. Assessing a civil penalty of Twenty-Five Thousand Dollars (\$25,000.00) for each day of violation;
5. Ordering the Defendants to pay all costs in this action, including expert witness and attorney fees against the Defendants; and
6. Granting other such relief as the Court deems appropriate and just.

## COUNT II

### Failure to Maintain Standards Required of Generators of Hazardous Waste

1. This Count is brought on behalf of the People of the State of Illinois by the Attorney General, on his own motion and upon the request of the Illinois EPA, pursuant to Sections 42(d) and (e) of the Act, 415 ILCS 5/42(d) and (e) (1996).

2-25. Plaintiff realleges and incorporates by reference herein, paragraphs 2 through 25 of Count I as paragraphs 2 through 25 of this Count II.

26. Section 21(i) of the Act, 415 ILCS 5/21(i) (1996), provides as follows:

No person shall:

- i. Conduct any process or engage in any act which produces hazardous waste in violation of any regulation or standard adopted by the Board under subsections (a) and (e) of Section 22.4 of this Act.

27. Section 722.110(a) of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 722.110(a), provides, in pertinent part, as follows:

These regulations establish standards for generators of hazardous waste.

28. Section 722.111 of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 722.111, provides as follows:

#### Hazardous Waste Determination

A person who generates a solid waste, as defined in 35 Ill. Adm. Code 721.102, shall determine if that waste is a hazardous waste using the following method:

- a) The person should first determine if the waste is excluded from regulation under 35 Ill. Adm. Code 721.104.

- b) The person must then determine if the waste is listed as a hazardous waste in 35 Ill. Adm. Code 721.Subpart D.

BOARD NOTE: Even if a waste is listed, the generator still has an opportunity under 35 Ill. Adm. Code 720.122 to demonstrate that the waste from the generator's particular facility or operation is not a hazardous waste.

- c) For purposes of compliance with 35 Ill. Adm. Code 728, or if the waste is not listed as a hazardous waste in 35 Ill. Reg. Adm. Code 721.Subpart D, the generator shall then determine whether the waste is identified in 35 Ill. Adm. Code 721.Subpart C by either:
  - 1) Testing the waste according to the methods set forth in 35 Ill. Adm. Code 721, Subpart C, or according to an equivalent method approved by the Board under 35 Ill. Adm. Code 720.121; or
  - 2) Applying knowledge of the hazard characteristic of the waste in light of the materials or the processes used.
- d) If the generator determines that the waste is hazardous, the generator shall refer to 35 Ill. Adm. Code 724, 725, 728 and 733 for possible exclusions or restrictions pertaining to the management of the specific waste.

(Source: Amended at 15 Ill. Reg. 9644, effective June 17, 1991. Amended at 20 Ill. Reg. 11236, effective August 1, 1996).

29. From at least February 16, 1994 and continuing through the filing of this Complaint, the Defendants, UACC and Samarah, have not determined whether any of their solid wastes were a hazardous waste as required by Section 722.111(a) of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 722.111(a).

30. Section 722.134(a) of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 722.134(a), provides, in pertinent part, as follows:

#### Accumulation Time

a) Except as provided in subsections (d), (e) or (f), below, a generator is exempt from all the requirements in 35 Ill. Adm. Code 725 Subparts G and H, except for 35 Ill. Adm. Code 725.211 and 725.214 and may accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status provided that:

1) The waste is placed:

A) In containers and the generator complies with 35 Ill. Adm. Code 725.Subpart I: or

B) In tanks and the generator complies with 35 Ill. Adm. Code 725.Subpart J except 35 Ill. Adm. Code 725.297(c) and 725.300; or

\* \* \*

2) The date upon which each period of accumulation begins is clearly marked and visible for inspection on each container;

3) While being accumulated on-site, each container and tank is labeled or marked clearly with the words "Hazardous Waste", and

4) The generator complies with the requirements for owners and operators in 35 Ill. Adm. Code 725 Subparts C and D and with 35 Ill. Adm. Code 725.116 and 728.107(a)(4).

31. From at least February 16, 1994 and continuing through the filing of this Complaint, Defendants, UACC and Samarah, have not labeled containers of hazardous waste with the words "Hazardous Waste" and have not marked the start accumulation dates as required by Section 722.134(a)(2) and (3) of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 722.134(a)(2) and (3).

32. Section 722.134(c) of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 722.134(c), provides as follows:

- c) Accumulation near point of generation.
  - 1) A generator may accumulate as much as 55 gallons of hazardous waste or one quart of acutely hazardous waste listed in 35 Ill. Adm. Code 721.133(e) in containers at or near any point of generation where wastes initially accumulate, that is under the control of the operator of the process generating the waste, without a permit or interim status and without complying with subsection (a), above, provided the generator:
    - A) Complies with 35 Ill. Adm. Code 725.271, 725.272 and 725.273(a); and 725.273(a); and
    - B) Marks the generator's containers either with the words "Hazardous Waste" or with other words that identify the contents of the containers.
  - 2) A generator who accumulates either hazardous waste or acutely hazardous waste listed in 35 Ill. Adm. Code 721.133(e) in excess of the amounts listed in subsection (c)(1), above, at or near any point of generation must, with respect to that amount of excess waste, comply within three days with subsection (a), above, or other applicable provisions of this chapter. During the three-day period the generator must continue to comply with subsection (c)(1), above. The generator must mark the container holding the excess accumulation of hazardous waste with the date the excess amount began accumulating.

33. From at least February 16, 1994 and continuing through the filing of the Complaint, Defendants, UACC and Samarah, did not comply with the requirements of accumulation near point of generation, by not transferring waste from containers which are in poor condition, by not always keeping



containers closed, by not checking containers on a weekly basis for leaks or deterioration, by not marking the containers with "Hazardous Waste" or with other words that identify the contents of the containers, and by not dating the container, as required by Section 722.134(c) of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 722.134(c).

34. Section 722.141(b) of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 722.141(b), provides as follows:

Annual Reporting

- b) Any generator who treats, stores or disposes of hazardous waste on-site must submit an annual report covering those wastes in accordance with the provisions of 35 Ill. Adm. Code 702, 703, 724, 725 and 726. . .

35. From at least February 16, 1994 and continuing through the filing of the Complaint, Defendants, UACC and Samarah, have not filed generator annual reports, as required by Section 722.141(b) of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 722.141(b).

36. Defendants, UACC and Samarah, by their conduct described herein, have violated Section 21(i) of the Act, 415 ILCS 5/21(i)(1996), 35 Ill. Adm. Code 722.111(a), 722.134(a) and (c) and 722.141(b).

37. The failure of Defendants, UACC and Samarah, to maintain standards applicable to generators of hazardous waste at the facility as alleged in this Count poses a threat to human health and the environment, and is a violation of the Act and Board regulations.

38. Plaintiff has no adequate remedy at law as money damages will not cure the environmental harm alleged herein. Furthermore; Plaintiff will suffer irreparable injury through harm to the environment and its citizens until such time as this Court grants equitable relief in the form of a preliminary and, after a trial, permanent injunction.

WHEREFORE, the PEOPLE OF THE STATE OF ILLINOIS respectfully request that the Court grant a preliminary injunction and, after a trial, a permanent injunction in favor of Plaintiff and against Defendants, UACC and Samarah, on Count II:

1. Finding that the Defendants, UACC and Samarah, have violated Section 21(i) of the Act, 35 Ill. Adm. Code 722.111(a), 722.134(a) and (c) and 722.141(b);

2. Enjoining Defendants, UACC and Samarah, from further violations of Section 21(i) of the Act, 35 Ill. Adm. Code 722.111(a), 722.134(a) and (c), and 722.141(b);

3. Ordering Defendants, UACC and Samarah, to comply with all standards required of generators of hazardous waste;

4. Assessing a civil penalty of Twenty-Five Thousand Dollars (\$25,000.00) for each day of violation;

5. Ordering the Defendants, UACC and Samarah, to pay all costs in this action, including expert witness and attorney fees, against the Defendants; and

6. Granting other such relief as the Court deems appropriate and just.

COUNT III

Failure to Maintain Interim Status Standards  
for Owners and Operators of Hazardous Waste Treatment,  
Storage and Disposal Facilities

1-36. Plaintiff realleges and incorporates by reference herein, paragraphs 1 through 35 of Count I as paragraphs 1 through 35 of this Count III.

37. Section 703.156 of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 703.156, provides as follows:

Interim Status Standards

During interim status, owners or operators shall comply with the interim status standards at 35 Ill. Adm. Code 725.

38. Defendants, UACC and Samarah, were the owners and operators of a hazardous waste storage facility, and they have not submitted a Part A Permit application. Defendants, UACC and Samarah, stored waste at the facility after November 19, 1980. Thus, Defendants' facility is subject to Interim Status Standards pursuant to Section 725.101(b) of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 725.101(b).

39. Defendants, TDC/UAC, Inc., is the operator of a hazardous waste storage facility, and it has not submitted a Part A Permit application. Defendant, TDC/UAC, Inc., stored waste at the facility after November 19, 1980. Thus, the facility is subject to Interim Status Standards pursuant to Section 725.101(b) of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 725.101(b).

40. Section 725.113(a) and (b) of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 725.113(a) and (b), provides, in pertinent part, as follows:

General Waste Analysis

a) Waste analysis:

- 1) Before an owner or operator treats, stores or disposes of any hazardous waste, or non-hazardous waste if applicable under Section 725.213(d), the owner or operator shall obtain a detailed chemical and physical analysis of a representative sample of the waste. At a minimum, this analysis must contain all the information which must be known to treat, store or dispose of the waste in accordance with the requirements of this Part and 35 Ill. Adm. Code 728.

\* \* \*

- b) The owner or operator shall develop and follow a written waste analysis plan which describes the procedures which the owner or operator will carry out to comply with subsection (a) above. The owner or operator shall keep this plan at the facility. At a minimum, the plan must specify:

- 1) The parameters for which each hazardous waste, or non-hazardous waste if applicable under Section 725.213(d), will be analyzed and the rationale for the selection of these parameters (i.e, how analysis for these parameters will provide sufficient information on the waste's properties to comply with subsection (a) above.
- 2) The test methods which will be used to test for these parameters.
- 3) The sampling method which will be used to obtain a representative sample of the waste to be analyzed. A representative sample may be obtained using either:
  - A) One of the sampling methods described in 35 Ill. Adm. Code 721.Appendix A; or

b) An equivalent sampling method.

BOARD NOTE: See 35 Ill. Adm. Code 720.120(c) for related discussion.

- 4) The frequency with which the initial analysis of the waste will be reviewed or repeated to ensure that the analysis is accurate and up-to-date.
- 5) For off-site facilities, the waste analyses that hazardous waste generators have agreed to supply.
- 6) Where applicable, the methods which will be used to meet the additional waste analysis requirements for specific waste management methods as specified in Section 725.300, 725.325, 725.352, 725.373, 725.414, 725.441, 725.475 and 725.502, 725.934(d) and 725.963(d), and 35 Ill. Adm. Code 107. And,
- 7) For surface impoundments exempted from land disposal restrictions under 35 Ill. Adm. Code 728.104(a), the procedures and schedules for:
  - A) The sampling of impoundment contents;
  - B) The analysis of test data; and,
  - C) The annual removal of residues which are not delisted under 35 Ill. Adm. Code 720.122 or which exhibit a characteristic of hazardous waste, and either:
    - i) Do not meet applicable treatment standards of 35 Ill. Adm. Code 728.Subpart D; or
    - ii) Where no treatment standards have been established: Such residues are prohibited from land disposal under 35 Ill. Adm. Code 728.132 or 728.139; or such residues are prohibited from land disposal under 35 Ill. Adm. Code 728.133(f).

41. From at least February 16, 1994 and continuing through the filing of this Complaint, Defendants, UACC and Samarah, have not analyzed the wastes that they were storing and had no written waste analysis plan, as required by Section 725.113(a) and (b) of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 725.113(a) and (b).

42. From at least December 15, 1995 and continuing through the filing of this Complaint, Defendant TDC/UAC, Inc., has not analyzed the wastes that it was storing and had no written waste analysis plan, as required by Section 725.113(a) and (b) of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 725.113(a) and (b).

43. Section 725.115(a) and (b) of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 725.115(a) and (b), provides as follows:

- a) The owner or operator shall inspect the facility for malfunctions and deterioration, operator errors and discharges that may be causing--or may lead to--the conditions listed below. The owner or operator shall conduct these inspections often enough to identify problems in time to correct them before they harm human health or the environment.
  - 1) Release of hazardous waste constituents to the environment; or
  - 2) A threat to human health.
- b) Written schedule.
  - 1) The owner or operator shall develop and follow a written schedule for inspecting all monitoring equipment, safety and emergency equipment, security devices and operating and structural equipment (such as dikes and sump pumps) that are important to preventing, detecting or

responding to environmental or human health hazards.

- 2) The owner or operator shall keep this schedule at the facility.
- 3) The schedule must identify the types of problems (e.g., malfunctions or deterioration) which are to be looked for during the inspection (e.g., inoperative sump pump, leaking fitting, eroding dike, etc.).
- 4) The frequency of inspection may vary for the items on the schedule. However, it should be based on the rate of possible deterioration of the equipment and the probability of an environmental or human health incident if the deterioration, malfunction or any operator error goes undetected between inspections. Areas subject to spills, such as loading and unloading areas, must be inspected daily when in use. At a minimum, the inspection schedule must include the terms and frequencies called for in Sections 725.274, 725.293, 725.295, 725.326, 725.360, 725.378, 725.404, 725.447, 725.477, 725.503, 725.933, 725.952, 725.953, and 725.958, where applicable.

44. From at least February 16, 1994 and continuing through the filing of this Complaint, Defendants UACC and Samarah have not inspected for problems which may lead to a release of hazardous waste and did not develop a written inspection schedule, as required by Section 725.115(a) and (b) of the Board Waste Disposal Regulations, 35 Ill. Adm. Code Section 725.115(a) and (b).

45. From December 15, 1995 and continuing through the filing of this Complaint, Defendant, TDC./UAC, Inc., has not inspected for problems which may lead to a release of hazardous waste and did not develop a written inspection schedule, as required by Section 725.115(a) and (b) of the Board Waste

Disposal Regulations, 35 Ill. Adm. Code Section 725.115(a) and (b).

46. Section 725.116(a) of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 725.116(a), provides as follows:

- a) 1) Facility personnel must successfully complete a program of classroom instruction or on-the-job training that teaches them to perform their duties in a way that ensures the facility's compliance with the requirements of this Part. The owner or operator must ensure that this program includes all the elements described in the document required under paragraph (d)(3) of this Section.
- 2) This program must be directed by a person trained in hazardous waste management procedures, and must include instruction which teaches facility personnel hazardous waste management procedures (including contingency plan implementation) relevant to the positions in which they are employed.
- 3) At a minimum, the training program must be designed to ensure that facility personnel are able to respond effectively to emergencies by familiarizing them with emergency procedures, emergency equipment and emergency systems, including, where applicable:
  - A) Procedures for using, inspecting, repairing and replacing facility emergency and monitoring equipment;
  - B) Key parameters for automatic waste feed cut-off systems;
  - C) Communications or alarm systems;
  - D) Response to fires or explosions;
  - E) Response to groundwater contamination incidents; and
  - F) Shutdown of operations.



47. From at least February 16, 1994, and continuing through the filing of this Complaint, Defendants, UACC and Samarah, have not had a hazardous waste training program, as required by Section 725.116(a) of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 725.116(a).

48. From December 15, 1995 and continuing through the filing of this Complaint, Defendant, TDC/UAC, Inc., has not had a hazardous waste training program, as required by Section 725.116(a) of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 725.116(a).

49. Section 725.131 of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 725.131, provides as follows:

Facilities must be designed, constructed, maintained and operated to minimize the possibility of a fire, explosion or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil or surface water which could threaten human health or the environment.

50. From at least February 16, 1994 and continuing through the filing of this Complaint, Defendants, UACC and Samarah, have not operated or maintained the facility so as to minimize the possibility of a release of hazardous waste, which could threaten human health or the environment, as required by Section 725.131 of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 725.131.

51. From December 15, 1995 and continuing through the filing of this Complaint, Defendant, TDC/UAC, Inc., has not operated or maintained the facility so as to minimize the possibility of a release of hazardous waste, which could threaten human health or the environment, as required by

Section 725.131 of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 725.131.

52. Section 725.134 of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 725.134, provides as follows:

- a) Whenever hazardous waste is being poured, mixed, spread or otherwise handled, all personnel involved in the operation must have immediate access to an internal alarm or emergency communication device, either directly or through visual or voice contact with another employee, unless the permit specifies that such a device is not required under Section 725.132.
- b) If there is ever just one employee on the premises while the facility is operating, the employee must have immediate access to a device, such as a telephone (immediately available at the scene of operations) or a hand-held two-way radio, capable of summoning external emergency assistance, unless the permit specifies that such a device is not required under Section 725.132.

53. From at least February 16, 1994 and continuing through the filing of this Complaint, Defendants, UACC and Samarah, did not have immediate access for employees to an alarm or communication device in all places where hazardous waste is being handled, as required by Section 725.134 of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 725.134.

54. From December 15, 1995 and continuing through the filing of this Complaint, Defendant, TDC/UAC, Inc., did not have immediate access for employees to an alarm or communication device in all places where hazardous waste is being handled, as required by Section 725.134 of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 725.134.

55. Section 725.135 of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 725.135, provides as follows:

The owner or operator must maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment and decontamination equipment to any area of facility operation in an emergency, unless the owner or operator demonstrates to the Agency that aisle space is not needed for any of these purposes.

56. From at least February 16, 1994 and continuing through the filing of this Complaint, Defendants have not maintained adequate aisle space as required by Section 725.135 of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 725.135.

57. From December 15, 1995 and continuing through the filing of this Complaint, Defendant, TDC/UAC, Inc., has not maintained adequate aisle space as required by Section 725.135 of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 725.135.

58. Section 725.137 of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 725.137, provides as follows:

- a) The owner or operator must attempt to make the following arrangements as appropriate for the type of waste handled at the facility and the potential need for the services of these organizations:
  - 1) Arrangements to familiarize police, fire departments and emergency response teams with the layout of the facility, properties of hazardous waste handled at the facility and associated hazards, places where facility personnel would normally be working, entrances to and roads inside the facility and possible evacuation routes;
  - 2) Where more than one police and fire department might respond to an emergency, agreements designating primary emergency authority to a specific police and a specific fire department, and agreements

with any others to provide support to the primary emergency authority;

- 3) Agreements with State emergency response teams, emergency response contractors and equipment suppliers; and
- 4) Arrangements to familiarize local hospitals with the properties of hazardous waste handled at the facility and the types of injuries or illnesses which could result from fires, explosions or releases at the facility.

- b) Where state or local authorities decline to enter into such arrangements, the owner or operator must document the refusal in the operating record.

59. From at least February 16, 1994 and continuing through the filing of this Complaint, Defendants, UACC and Samarah, have not had proof of arrangements with local authorities as required by Section 725.137 of the Board Waste Disposal Regulations, 35 Ill. Adm. Code Section 725.137.

60. From December 15, 1995 and continuing through the filing of this Complaint, Defendant, TDC/UAC, Inc., has not had proof of arrangements with local authorities as required by Section 725.137 of the Board Waste Disposal Regulations, 35 Ill. Adm. Code Section 725.137.

61. Section 725.151(a) of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 725.151(a), provides as follows:

- a) Each owner or operator must have a contingency plan for the facility. The contingency plan must be designed to minimize hazards to human health or the environment from fires, explosions or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil or surface water.

62. From at least February 16, 1994 and continuing through the filing of this Complaint, Defendants, UACC and Samarah, have not had a contingency plan available, as required by Section 725.151(a) of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 725.151(a).

63. From December 15, 1995 and continuing through the filing of this Complaint, Defendant, TDC/UAC, Inc., has not had a contingency plan available, as required by Section 725.151(a) of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 725.151(a).

64. Section 725.155 of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 725.155, provides as follows:

At all times, there must be at least one employee either on the facility premises or on call (i.e., available to respond to an emergency by reaching the facility within a short period of time) with the responsibility for coordinating all emergency response measures. This emergency coordinator must be thoroughly familiar with all aspects of the facility's contingency plan, all operations and activities at the facility, the location and characteristics of waste handled, the location of all records within the facility and the facility layout. In addition, this person must have the authority to commit the resources needed to carry out the contingency plan.

BOARD NOTE: The emergency coordinator's responsibilities are more fully spelled out in Section 725.156. Applicable responsibilities for the emergency coordinator vary, depending on factors such as type and variety of waste(s) handled by the facility, and type and complexity of the facility.

65. From at least February 16, 1994 and continuing through the filing of this Complaint, Defendants, UACC and Samarah, have not had an emergency coordinator on-site or on call at all times, and the emergency coordinator has not been

familiar with all the required information as required by Section 725.155 of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 725.155.

66. From December 15, 1995 and continuing through the filing of this Complaint, Defendant, TDC/UAC, Inc. has not had an emergency coordinator on-site or on call at all times, and the emergency coordinator has not been familiar with all the required information as required by Section 725.155 of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 725.155.

67. Section 725.212(a) of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 725.212(a), provides as follows:

Closure Plan; Amendment of Plan

- a) Written plan. Within six months after the effective date of the rule that first subjects a facility to provisions of this Section, the owner or operator of a hazardous waste management facility shall have a written closure plan. Until final closure is completed and certified in accordance with Section 725.215, a copy of the most current plan must be furnished to the Agency upon request including request by mail. In addition, for facilities without approved plans, it must also be provided during site inspections on the date of inspection to any officer, employee or representative of the Agency.

68. From at least February 16, 1994 and continuing through the filing of this Complaint, Defendants, UACC and Samarah, have not had a closure plan, as required by Section 725.212(a) of the Board Waste Disposal Regulation of 35 Ill. Adm. Code 725.212(a).

69. From December 15, 1995 and continuing through the filing of this Complaint, Defendant, TDC/UAC, Inc., has not had

a closure plan, as required by Section 725.212(a) of the Board Waste Disposal Regulation of 35 Ill. Adm. Code 725.212(a).

70. Section 725.218(a) of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 725.218(a), provides as follows:

- a) Written Plan. The owner or operator of a hazardous waste disposal unit shall have a written post-closure plan. An owner or operator of a surface impoundment or waste pile that intends to remove all hazardous wastes at closure shall prepare a post-closure plan and submit it to the Agency within 90 days after the date that the owner or operator or Agency determines that the hazardous waste management unit or facility must be closed as a landfill, subject to the requirements of Sections 725.217 through 725.220.

71. From at least February 16, 1994 and continuing through the filing of this Complaint, Defendants, UACC and Samarah, have not had a written post-closure plan as required by Section 725.218(a) of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 725.218(a).

72. From December 15, 1995 and continuing through the filing of this Complaint, Defendant, TDC/UAC, Inc., has not had a written post-closure plan as required by Section 725.218(a) of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 725.218(a).

73. Section 725.242(a) of the Board Waste Disposal Regulation, 35 Ill. Adm. Code 725.242(a), provides as follows:

Cost Estimate For Closure

- a) The owner or operator shall have a detailed written estimate, in current dollars, of the cost of closing the facility in accordance with the requirements in Sections 725.211 through 725.215 and applicable closure requirements of Sections 725.278, 725.297, 725.328, 725.358, 725.380, 725.410, 725.451, 725.481, 725.504, and 725.1102.

- 1) The estimate must equal the cost of final closure at the point in the facility's active life when the extent and manner of its operation would make closure the most expensive, as indicated by its closure plan (see Section 725.212(b)); and
- 2) The closure cost estimate must be based on the costs to the owner or operator of hiring a third party to close the facility. A third party is a party who is neither a parent nor a subsidiary of the owner or operator. . . .
- 3) The closure cost estimate must not incorporate any salvage value that may be realized by the sale of hazardous wastes, or non-hazardous wastes if applicable under Section 725.213(d), facility structures or equipment, land or other facility assets at time of partial or final closure;
- 4) The owner or operator shall not incorporate a zero cost for hazardous waste, or non-hazardous waste if applicable under Section 725.213(d), which may have economic value.

74. From at least February 16, 1994 and continuing through the filing of this Complaint, Defendants have not had closure cost estimates for the facility as required by Section 725.242(a) of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 725.242(a).

75. From December 15, 1995 and continuing through the filing of this Complaint, Defendant, TDC/UAC, Inc., has not had closure cost estimates for the facility as required by Section 725.242(a) of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 725.242(a).

76. Section 725.244(a) of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 725.244(a), provides as follows:

- a) The owner or operator of a hazardous waste disposal unit shall have a defined written estimate, in current dollars, of the annual



cost of post-closure monitoring and maintenance of the facility in accordance with the applicable post-closure regulations in Sections 725.217 through 725.220, 725.328, 725.358, 725.380, and 725.410.

- 1) The post-closure cost estimate must be based on the costs to the owner or operator of hiring a third party to conduct post-closure care activities. A third party is a party who is neither a parent nor a subsidiary of the owner or operator. (See definition of parent corporation in Section 725.241(d).
- 2) The post-closure cost estimate is calculated by multiplying the annual post-closure care required under Section 725.217.

77. From at least February 16, 1994 and continuing through the filing of this Complaint, Defendants, UACC and Samarah, have not prepared a written estimate of post-closure costs as required by Section 725.244(a) of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 725.244(a).

78. From December 15, 1995 and continuing through the filing of this Complaint, Defendant, TDC/UAC, Inc., has not prepared a written estimate of post-closure costs as required by Section 725.244(a) of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 725.244(a).

79. Section 725.271 of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 725.271, provides as follows:

If a container holding hazardous waste is not in good condition or if it begins to leak, the owner or operator must transfer the hazardous waste from this container to a container that is in good condition or manage the waste in some other way that complies with the requirements of this Part.

80. From at least February 16, 1994 and continuing through the filing of this Complaint, Defendants, UACC and

Samarah, have not transferred waste from containers which are in poor condition, as required by Section 725.271 of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 725.271.

81. From December 15, 1995 and continuing through the filing of this Complaint, Defendant, TDC/UAC, Inc., has not transferred waste from containers which are in poor condition, as required by Section 725.271 of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 725.271.

82. Section 725.273(a) and (b) of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 725.273(a) and (b), provides as follows:

- a) A container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste.
- b) A container holding hazardous waste must not be opened, handled or stored in a manner which may rupture the container or cause it to leak.

BOARD NOTE: Re-use of containers in transportation is governed by U.S. Department of Transportation regulations including those set forth in 49 CFR 173.28.

83. From at least February 16, 1994 and continuing through the filing of this Complaint, Defendants, UACC and Samarah, have not always kept containers closed and have not stored containers in a way which will prevent leaking, as required by Section 725.273(a) and (b) of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 725.273(a) and (b).

84. From December 15, 1995 and continuing through the filing of this Complaint, Defendant, TDC/UAC, Inc., has not always kept containers closed and has not stored containers in a way which will prevent leaking, as required by Section

725.273(a) and (b) of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 725.273(a) and (b).

85. Section 35 Ill. Adm. Code 725.274, provides as follows:

The owner or operator must inspect areas where containers are stored at least weekly, looking for leaks caused by corrosion or other factors.

BOARD NOTE: See Section 725.271 for remedial action required if deterioration or leaks are detected.

86. From at least February 16, 1994 and continuing through the filing of this Complaint, Defendants, UACC and Samarah, have not checked containers on a weekly basis for leaks or deterioration, as required by Section 725.274 of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 725.274.

87. From December 15, 1995 and continuing through the filing of this Complaint, Defendant, TDC/UAC, Inc., has not checked containers on a weekly basis for leaks or deterioration, as required by Section 725.274 of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 725.274.

88. Defendants, by their conduct herein described, have failed to maintain the interim status standards for owners and operators of hazardous waste treatment, storage and disposal facilities, in violation of Section 21(f)(2) of the Act, 415 ILCS 5/21(f)(2) (1996), and 35 Ill. Adm. Code 725.113(a) and (b), 725.115(a) and (b), 725.116(a), 725.131, 725.134, 725.135, 725.137, 725.151(a), 725.155, 725.212(a), 725.218(a), 725.242(a), 725.244(a), 725.271, 725.273(a) and (b) and 725.274.

89. The failure of the Defendants to maintain interim status standards for owners and operators of hazardous waste storage facilities poses a threat to human health and the environment, and is a violation of the Act and Board regulations.

90. Plaintiff has no adequate remedy at law as money damages will not cure the environmental harm alleged herein. Furthermore, Plaintiff will suffer irreparable injury through harm to the environment and its citizens until such time as this Court grants equitable relief in the form of a preliminary and, after a trial, permanent injunction.

WHEREFORE, the PEOPLE OF THE STATE OF ILLINOIS respectfully request that the Court grant a preliminary injunction and, after trial a permanent injunction in favor of Plaintiff and against Defendants on Count III:

1. Finding that the Defendants have violated Section 21(f)(2) of the Act, 35 Ill. Adm. Code 725.113(a) and (b), 725.115(a) and (b), 725.116(a), 725.131, 725.134, 725.135, 725.137, 725.151(a), 725.155, 725.212(a), 725.218(a), 725.242(a), 725.244(a), 725.271, 725.273(a) and (b) and 725.274;

2. Enjoining Defendants from further violations of Section 21(f)(2) of the Act, 35 Ill. Adm. Code 725.113(a) and (b), 725.115(a) and (b), 725.116(a), 725.131, 725.134, 725.135, 725.137, 725.151(a), 725.155, 725.212(a), 725.218(a), 725.242(a), 725.244(a), 725.271, 725.273(a) and (b) and 725.374;

3. Ordering Defendants to comply with all Interim Status Standards for Owners and Operators of Hazardous Waste Storage Facilities;

4. Assessing a civil penalty of Twenty-Five Thousand Dollars (\$25,000.00) for each day of violation;

5. Ordering the Defendants to pay all costs in this action, including expert witness and attorney fees, against the Defendants; and

6. Granting other such relief as the Court deems appropriate and just.

#### COUNT IV

##### Failure to Maintain Recordkeeping and Reporting Requirements

1-36. Plaintiff realleges and incorporates by reference herein, paragraphs 1 through 35 of Count I as paragraphs 1 through 35 this Count IV.

37. Section 725.173 of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 725.173, provides as follows:

##### Operating Record

- a) The owner or operator shall keep a written operating record at the facility.
- b) The following information must be recorded as it becomes available and maintained in the operating record until closure of the facility.
  - 1) A description and the quantity of each hazardous waste received and the method or methods and date or dates of its treatment, storage or disposal at the facility as required by Appendix A;
  - 2) The location of each hazardous waste within the facility and quantity at each location. For disposal facilities the location quantity of each hazardous waste must be recorded on a map or diagram of

each cell or disposal area. For all facilities this information must include cross-references to specific manifest document numbers if the waste was accompanied by a manifest; BOARD NOTE: See Sections 725.219, 725.379 and 725.409 for related requirements.

- 3) Records and results of waste analysis and trial test performed as specified in Sections 725.113, 725.300, 725.325, 725.352, 725.373, 725.414, 725.441, 725.502, 725.502, 725.934 and 725.963 and 35 Ill. Adm. Code 728.104(a) and 728.107;
- 4) Summary reports and details of all incidents that require implementing the contingency plan as specified in Section 725.156(j);
- 5) Records and results of inspections as required by Sections 725.115(d) (except these data need be kept only three years);
- 6) Monitoring, testing or analytical data and corrective action where required by subpart F or Sections 725.119, 725.190, 725.194, 725.291, 725.293, 725.295, 725.322, 725.323, 725.326, 725.355, 725.359, 725.360, 725.376, 725.378, 725.380(d)(1), 725.402 through 725.404, 725.447, 725.477, 725.934(c) through (f), 725.935, 725.963(d) through (I) or 725.964; BOARD NOTE: As required by Section 725.194, monitoring data at disposal facilities must be kept throughout the post-closure period.
- 7) All closure cost estimates under Section 725.242 and, for disposal facilities, all post-closure cost estimates under Section 725.244;
- 8) Records of the quantities (and date of placement) for each shipment of hazardous waste placed in land disposal units under an extension of the effective date of any land disposal restriction granted pursuant to 35 Ill. Adm. Code 728.105, a petition pursuant to 35 Ill. Adm. Code 728.106 or a certification under 35 Ill. Adm. Code 278.108, and the applicable notice required of a generator under 35 Ill. Adm. Code 728.107(a);

- 9) For an off-site treatment facility, a copy of the notice, and the certification and demonstration, if applicable, required of the generator or the owner or operator under 35 Ill. Adm. Code 728.107 or 728.108;
- 10) For an on-site treatment facility, the information contained in the notice (except the manifest number), and the certification and demonstration, if applicable, required of the generator or the owner or operator under 35 Ill. Adm. Code 728.107 or 728.108;
- 11) For an off-site land disposal facility, a copy of the notice, and the certification and demonstration, if applicable, required of the generator or the owner or operator of a treatment facility under 35 Ill. Adm. Code 728.107 or 728.108, whichever is applicable; and
- 12) For an on-site land disposal facility, the information contained in the notice required of the generator or owner or operator of a treatment facility under 35 Ill. Adm. Code 728.107, except for the manifest number, and the certification and demonstration, if applicable, required under 35 Ill. Adm. Code 728.108, whichever is applicable.
- 13) For an off-site storage facility, a copy of the notice, and the certification and demonstration, if applicable, required of the generator or the owner or operator under 35 Ill. Adm. Code 728.107 or 728.108; and
- 14) For an on-site storage facility, the information contained in the notice (except the manifest number), and the certification and demonstration if applicable, required of the generator or the owner or operator under 35 Ill. Adm. Code 728.107 or 728.108.

38. From at least February 16, 1994, and continuing through the filing of this Complaint, Defendants, UACC and Samarah, have not maintained a written operating record as

required by Section 725.173 of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 725.173.

39. From December 15, 1995 and continuing through the filing of this Complaint, Defendant TDC/UAC, Inc., has not maintained a written operating record as required by Section 725.173 of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 725.173.

40. Defendants, by their conduct herein described, have failed to maintain the recordkeeping and reporting requirements, in violation of Section 21(f)(2) of the Act, 415 ILCS 5/21(f)(2)(1996), and 35 Ill. Adm. Code 725.173.

41. The failure of the Defendants to maintain recordkeeping and reporting requirements poses a threat to human health and the environment, and is a violation of the Act and Board regulations.

42. Plaintiff has no adequate remedy at law as money damages will not cure the environmental harm alleged herein. Furthermore, Plaintiff will suffer irreparable injury through harm to the environment and its citizens until such time as this Court grants equitable relief in the form of a preliminary and, after a trial, permanent injunction.

WHEREFORE, the PEOPLE OF THE STATE OF ILLINOIS respectfully request that the Court grant a preliminary injunction and, after trial a permanent injunction in favor of Plaintiff and against Defendants on Count IV:

1. Finding that the Defendants have violated Section 21(f)(2) of the Act and 35 Ill. Adm. Code 725.173;



2. Enjoining Defendants from further violations of Section 21(f)(2) of the Act and 35 Ill. Adm. Code 725.173;

3. Ordering Defendants to comply with the recordkeeping and reporting requirements;

4. Assessing a civil penalty of Twenty-Five Thousand Dollars (\$25,000.00) for each day of violation;

5. Ordering the Defendants to pay all costs in this action, including expert witness and attorney fees, against the Defendants; and

6. Granting other such relief as the Court deems appropriate and just.

#### COUNT V

##### Failure to Maintain Land Disposal Requirements

1. This Count is brought on behalf of the People of the State of Illinois by the Attorney General, on his own motion and upon the request of the Illinois EPA, pursuant to Sections 42(d) and (e) of the Act, 415 ILCS 5/42(d) and (e) (1996).

2-25. Plaintiff realleges and incorporates by reference herein, paragraphs 2 through 25 of Count I as paragraphs 1 through 30 of this Count V.

26. Section 21(i) of the Act, 415 ILCS 5/21(i) (1996), provides as follows:

No person shall:

- i. Conduct any process or engage in any act which produces hazardous waste in violation of any regulation or standard adopted by the Board under subsections (a) and 9(e) of Section 22.4 of this Act.1-35.

27. Section 728.107(a) of the Board Waste Disposal Regulations, Ill. Adm. Code 728.107(a), provides as follows:

## Waste Analysis and Recordkeeping

- a) Except as specified in Section 728.132, where a generator's waste is listed in 35 Ill. Adm. Code 721.Subpart D, or if the waste exhibits one or more of the characteristics set out at 35 Ill. Adm. Code 721.Subpart C, the generator shall test his waste, or test an extract using the Toxicity Characteristic Leaching procedure, method 1311, in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", U.S. EPA Publication SW-846, as incorporated by reference in 35 Ill. Adm. Code 720.111, or use knowledge of the waste, to determine if the waste is restricted from land disposal under this Part. If the generator determines that its waste displays the characteristic of ignitability (D001) (and is not in the High TOC Ignitable Liquids Subcategory or is not treated by INCIN, FSUBS, or RORGS of Section 728.Table C of this Part), the waste display characteristic corrosivity (D002), and is prohibited under Section 728.137, or the waste displays the characteristic of organic toxicity (D012-D043) and is prohibited under Section 728.138, the generator shall determine what underlying hazardous constituents (as defined in Section 728.102 of this Part), are reasonably expected to be present in the D001, D002, or D012 through D043 waste.

28. From at least February 16, 1994 and continuing through the filing of this Complaint, Defendants, UACC and Samarah, have not tested the waste as specified in Section 728.107(a) or used knowledge of the waste to determine if the waste is restricted from land disposal, as required by Section 728.107(a) of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 728.107(a).

29. Section 728.150(c) of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 728.150(c), provides as follows:

An owner or operator of a treatment, storage or disposal facility may store such wastes beyond one year, however, the owner or operator bears the burden of proving that such storage was solely for the purpose of accumulation of such quantities of hazardous waste as are necessary to facilitate proper recovery, treatment or disposal.

30. From at least February 16, 1995 and continuing through the filing of this Complaint, Defendants, UACC and Samarah, have stored waste on-site for greater than one year without showing that it was necessary to facilitate proper recovery, treatment or disposal, as required by Section 728.150(c) of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 728.150(c).

31. Defendants, USCC and Samarah, by their conduct herein described, have violated Section 21(i) of the Act, 415 ILCS 5/21(i) 91996), and 35 Ill. Adm. Code 728.107(a) and 728.150(c).

32. The failure of the Defendants, UACC and Samarah, to maintain Land Disposal requirements as alleged in this Count, poses a threat to human health and the environment, and is a violation of the Act and Board regulations.

33. Plaintiff has no adequate remedy at law as money damages will not cure the environmental harm alleged herein. Furthermore, Plaintiff will suffer irreparable injury through harm to the environment and its citizens until such time as the Court grants equitable relief in the form of a preliminary and, after a trial, permanent injunction.

WHEREFORE, the PEOPLE OF THE STATE OF ILLINOIS respectfully request that the Court grants a preliminary injunction and, after a trial, a permanent injunction in favor of Plaintiff and against Defendants on Count V:

1. Finding that Defendants, UACC and Samarah, have violated Section 21(i) of the Act, and 35 Ill. Adm. Code 728.107(a) and 728.150(c);

2. Enjoining the Defendants, UACC and Samarah, from further violation of Section 21(i) of the Act, and 35 Ill. Adm. Code 728.107(a) and 728.150(c);

3. Ordering Defendants, UACC and Samarah, to maintain Land Disposal requirements;

4. Assessing a civil penalty of Twenty-Five Thousand Dollars (\$25,000.00) for each day of violation;


5. Ordering the Defendants to pay all costs in this action, including expert witness and attorney fees, against the Defendants; and

6. Granting other such relief as the Court deems appropriate and just.

PEOPLE OF THE STATE OF ILLINOIS,  
ex rel. JAMES E. RYAN, Attorney  
General of the State of Illinois

MATTHEW J. DUNN, Chief  
Environmental Enforcement/Asbestos  
Litigation Division

BY:

  
\_\_\_\_\_  
WILLIAM D. SEITH, Chief  
Environmental Bureau  
Assistant Attorney General

Of Counsel

ELLEN O'LAUGHLIN  
Assistant Attorney General  
Environmental Bureau  
100 West Randolph Street, 11th Floor  
Chicago, Illinois 60601  
312/814-3532

Attorney Code No.: 99000

CD:\WPWIN\WPDOCS\ELLEN\EOC010H